IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 535 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GOTAJI GAGAJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 535 of 2000

MR RAJESH K KANANI for Petitioner No. 1

MR K.T.DAVE, APP for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 28/09/2001

ORAL JUDGEMENT

In this petition filed under Article-226 of the Constitution of India, petitioner has challenged the

order dated January 21, 2000 (Annexure-'B' to the petition) passed by the externing authority i.e. Sub-Divisional Magistrate, Dholka, by which he has externed the petitioner for a period of two years from 7 districts i.e. Ahmedabad Rural, Ahmedabad City, Mehsana, Kheda, Surendranagar, Bhavnagar and Gandhinagar and also the order dated March 22, 2000, (Annexure-C to the petition) passed by the appellate Authority confirming the said order and prayed to issue a writ, order or direction quashing and setting aside both the above orders.

2. A show-cause notice dated December 20, 1999 under Section 59 of the Bombay Police Act ('Act' for short)was issued to the petitioner, wherein, three allegations were made against him to the effect that he is a strong headed quarrelsome and aggressive person who has no fear of law and order, picking up quarrel with people and give threats to kill them, continues his anti social activities by which he is causing physical and financial damage to the people and the people are afraid of filing complaint against him and the activities carried out by him is detrimental for maintenance of public order. Besides this, seven offences under IPC are also registered with Bavla police station, Bavla against him. Therefore, by issuing show-cause notice the petitioner was called upon to show -cause as to why he should not be externed for a period of two years from the districts to which reference is made in earlier paragraph of this judgment.

3. The petitioner replied to the said show-cause notice. The externing Authority, after considering the reply and other documents on record, passed the impugned order of externment dated January 21, 2000 in exercise of the powers conferred under Section 56(A) of the Act externing the petitioner for a period of two years from the above mentioned districts.

4. Aggrieved by the aforesaid order passed by the externing Authority, the petitioner preferred an appeal before the appellate Authority, which was dismissed by the appellate Authority vide order dated March 22, 2000 which has given rise to the present petition.

5. When the matter is called out none appeared on behalf of the petitioner. However, from the averments made in the petition, it is seen that the petitioner belongs to village Jhekda, Taluka Bavla, district Ahmedabad and he has not only been externed from the Ahmedabad rural but from other 6 districts also. The

alleged so called activities which are narrated in the show-cause notice as well as in the impugned order are confined to village Jhekda, Taluka Bavla and the externing authority has not mentioned about the activities of the petitioner in the contiguous 6 districts. Therefore, according to the learned advocate for the petitioner the impugned order of externment suffers from the vice of non-application of mind, and is, therefore, liable to be quashed and set aside.

6. Mr.K.T.Dave, learned APP who appeared for the respondent State contested the petition by filing Affidavit in reply sworn by D.B.Maheta, Sub-Divisional Magistrate, Dholka. However, he does not dispute the factual aspect that the impugned order suffers from non-application of mind as in the said order it is no where mentioned why the petitioner is externed from other 6 districts also. He, therefore, urged to pass appropriate order in the light of the settled principles enunciated by this Court.

7. I have considered the submissions advanced by Mr. K.T.Dave, learned APP. I have also perused the averments made in the petition and the order passed by the externing Authority, as well as the order passed by the appellate Authority and other papers annexed to the petition.

8. It is true that the externing authority has power under sec. 56 of the Act to remove or extern a person not only from the district within which the externing authority has jurisdiction, but also from the district contiguous to his own district. The criteria for passing such an order is provided for in sec. 56 and there must be some indication in the order itself of the existence of circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district. Such circumstances must be qua every area or region from which a person is directed to be externed and there must be some material or indication of such material in the order.

9. Coming to the facts of the present case, there is no manner of doubt that the externing authority has not mentioned either in his show-cause notice or in the impugned order of externment as to what necessitated him to pass the order of externment of the petitioner from the above mentioned 7 districts. Therefore, it can be said that at the time of passing of the impugned order of externment the externing authority has not mentioned as

to why the petitioner should be externed from other 6 districts in addition to Ahmedabad rural. On this sole ground, the order of the externing authority externing the petitioner and that of the appellate authority confirming the order of externment are rendered invalid and illegal and deserves to be quashed and set aside.

10. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned orders at Annexures-'B' and 'C' to the petition are quashed and set aside. Rule is made absolute. Direct service is permitted.

(A.M. Kapadia, J.)

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